

# Water Watch

RIVERS NEED WATER

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September 21, 2000

Lynne Krasnow  
Hydro Program - NMFS  
525 NE Oregon Street Suite 500  
Portland, OR 97232

Re: National Marine Fisheries Service Draft Biological Opinion for FCRPS

Dear Ms. Krasnow,

WaterWatch of Oregon is a non profit public interest group whose mission is to protect and restore streamflows needed for fish, wildlife, recreation and the ecological integrity of rivers. For the past fifteen years WaterWatch has monitored water allocation decisions made by the Oregon Water Resources Department and Commission and the actions of the Bureau of Reclamation and pushed for reforms that would result in protection and restoration of water instream. WaterWatch's recent report *Rivers Without Water: Oregon's Unnatural Disaster* (contact Water Watch for publication information) documents the problem of dry streams in parts of the Columbia Basin and throughout the state.

The fundamental concept that fish need water instream is one that is often overlooked in the debate over the fate of Columbia and Snake River salmon and steelhead. The Draft Biological Opinion (BiOp) sets a laudable goal of increasing tributary water flow to improve fish spawning, rearing and migration. However, the Draft BiOp falls to address or take into account the following critical components:

## **Tributary Flows Generally**

The BiOp sets a laudable goal of increasing tributary water flow to improve fish spawning, rearing and migration. However, the specific actions proposed are not enough to achieve this goal for the following reasons:

- The Reasonable and Prudent Alternative (RPA) focuses on water, acquisitions, and deals and "coordination" between agencies. (9-112to9-114) While we support water acquisitions and deals as one way to restore streamflows, this approach ignores the fundamental problem facing listed fish in the basin - the critical need for better water management of the water system to ensure protection of tributary and mainstem waters. The BiOp should contain mandates that will result in the measurement and reporting of water use and the measurement and reporting of streamflows throughout the basin. Measurement and reporting is critical for water management and is critical if the region is serious about a program that will actually result in protection and restoration of tributary flows.

- The BiOp should consider and the RPA should include actions to ensure that future actions by the state water agencies do not undercut recovery efforts. There is a fundamental disconnect between the federal laws mandating protection of listed species and the archaic water allocation laws. While reform of these water laws is needed, there are also things state water management agencies can do that would not undermine and could actually further streamflow restoration and protection efforts. For example, with regard to existing undeveloped permits to use water the State of Oregon has the authority to deny and/or require mitigation for expanded water withdrawals if necessary to protect instream flows. Unfortunately Oregon rarely, if ever, exercises its authority in this manner. Under 50 CFR 402.14(g)(3) and 402.02 the BiOp should consider the cumulative effects of the action on listed species and where cumulative effects include State activities that are reasonably certain to occur the BiOp should address that issue. The current failure to address these activities in the Draft BiOp makes it inadequate.
- Oregon is just beginning to look at revisions to its water laws in response to pressures being brought about by Endangered Species Act listings. The BiOp should include an element that has NMFS be an active player in state discussions about how changes can be made to allow for the protection and restoration of streamflows that the BiOp acknowledges is critical to the recovery of listed fishes.

### **Bureau of Reclamation Projects**

The RPA in the Draft BiOp relating to the operations of Bureau of Reclamation (BOR) projects are insufficient for the following reasons:

- The RPA relating to unauthorized use of BOR project waters (known as water spreading) would require a two-year study by the Bureau to determine the extent of unauthorized water use in the basin and to "Indicate how the BOR will proceed" to address waterspreading. BiOp at 9-52. The BiOp also requires the BOR to complete supplemental, project-specific consultations "as appropriate." BiOp at 9-53. These RPAs are insufficient to stop Columbia and Snake River salmon and steelhead's slide to extinction. The issue of water spreading has been subject to several studies and further study will not result in salmon recovery. The BiOp should require immediate initiation of consultation on each of the BOR projects to ensure that project operations do not jeopardize listed salmon and steelhead. Water spreading should be addressed in each of the project operations and the BiOp should make it clear that consultation will result in cessation of those illegal deliveries in a manner which will result in restoration and protection of streamflow habitats.
- The RPA requires the BOR to pursue water conservation improvements and use available state and Federal law to ensure that a "reasonable portion of any water conserved will benefit listed species." BiOp at 9-52. What is a "reasonable portion?" Water conservation is an important tool to protect and restore streamflows. If public sources are used to fund/facilitate recovery of conserved water for fish then there must be a direct and correlating benefit.

Thank you for the opportunity to comment.

Sincerely,

Karen Russell  
Senior Staff Attorney